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2869 9370
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Secretary for Financial Services
and the Treasury
Financial Services and the Treasury Bureau
(Attn: Mrs Dorothy MA, PAS (FS) 1)
18/F, Tower 1
Admiralty Centre
18 Harcourt Road
Hong Kong

By Fax (2861 1494) and By Post

28 November 2003

Dear Mrs MA

Companies (Amendment) Bill 2003 ("the Bill")

I refer to the Administration's response to the 2nd Submission dated 4 November 2003 from Ms Alice Y L Chan and enclose my comments on the revised section 7 of the 17th Schedule of the Bill.

It is appreciated that your reply in both Chinese and English could reach us as soon as possible.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

Encl

Section 3 of the proposed 17th Schedule – small-scale offers

3. We agree that if an offer is not subject to the prospectus regime, its costs will be lower. This is a key reason for the amendment – small-scale offers might not otherwise occur because the cost of producing a prospectus would be too high. In proposing the \$5 million threshold in the Bill, we have taken into account market views and the costs associated with preparing a prospectus in compliance with prospectus requirements under CO. We believe that the proposed \$5 million threshold, together with the 12-month restriction² in Part 4 of the proposed 17th Schedule, sufficiently defines a very limited section of the public to which a small-scale offer may be made.

4. We note the observation that the small-scale offer exemption applies only to “personal offers”³ in Australia. We however consider that whether the offer is a “personal” one is irrelevant from the angle of investor protection since the offerees under a “personal” offer do not necessarily have sufficient knowledge to understand the risks involved.

Section 7 of the proposed 17th Schedule – offers for no consideration

5. Following our discussion with the respondent, we have identified ways to refine the drafting of section 7(a) to enhance clarity, as below -

“An offer of shares in a company -

(a) ~~made~~^{made} for no consideration to any or all holders of shares in the company;

or

~~(b) made~~^{made}, as an alternative to a dividend or other distribution, to all holders of issued shares in the company of any class, provided the shares offered are
b fully paid-up shares of the same class; and

~~(c)~~ containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.”

² Under section 3 of Part 4 of the 17th Schedule, for the purpose of the proposed small-scale offer, an offer is to be taken together with any other offer of the same class of shares or debentures which was open at anytime within the period of 12 months ending with the date on which the first-mentioned offer is first made.

³ Under the Australian Corporations Act 2001, a personal offer is defined to mean an offer that may only be accepted by the person to whom it is made and an offer made to a person who is likely to be interested in the offer.